

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE LITIGATION

MDL No. 1456

THIS DOCUMENT RELATES TO:

ALL ACTIONS

CIVIL ACTION: 01-CV-12257-PBS

Judge Patti B. Saris

**CLASS PLAINTIFFS' OPPOSITION TO SCHERING-PLOUGH CORPORATION'S
AND WARRICK PHARMACEUTICALS CORPORATION'S MOTION TO STRIKE
PORTIONS OF PLAINTIFFS' FOURTH AMENDED MASTER CONSOLIDATED
CLASS ACTION COMPLAINT AND NOTICE OF ERRATA**

During the second oral argument on plaintiffs' motion to certify a class for the claims against the Track One Defendants, the Court examined in detail the adequacy of the proposed class representation. This examination focused largely on whether the records demonstrated that each proposed representative for Class 1 had paid for a portion of a part B covered drug. The Court found that no individual satisfied the Court's criteria with respect to Schering/Warrick. The Court made it clear, however, that the parties could later address the status of class representatives and seek to add new representatives if they were found.

In the process of preparing the complaint adding the Track 2 proposed representatives, class counsel discovered that some of these representatives appear to have paid for drugs manufactured by Schering. Thus, these drugs were identified in the Fourth Amended Master Consolidated Class Action Complaint ("FAMCCA"). At this point plaintiffs are gathering the requisite documentation as to these purchases. If the documentation is adequate, plaintiffs will move to add these folks as Class 1 representatives for Schering. Schering's motion is hence premature for plaintiffs have not "unilaterally without Court approval" added a class

representative. Nor has class counsel “sought to deprive Schering of the opportunity for discovery.” As has been the case with all proposed representatives plaintiffs will offer Schering appropriate discovery.

In sum, Schering’s motion, made without any meet and confer, is completely without merit. At this point class plaintiffs have not moved to add these plaintiffs as representatives and will not do so until the process that has been followed for prior representatives has been followed here as well.

DATED: March 31, 2006.

By /s/ Steve W. Berman
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CERTIFICATE OF SERVICE BY LEXISNEXIS FILE & SERVE

Docket No. MDL 1456

I, Steve W. Berman, hereby certify that I am one of plaintiffs' attorneys and that, on March 31, 2006, I caused copies of **CLASS PLAINTIFFS' OPPOSITION TO SCHERING-PLOUGH CORPORATION'S AND WARRICK PHARMACEUTICALS CORPORATION'S MOTION TO STRIKE PORTIONS OF PLAINTIFFS' FOURTH AMENDED MASTER CONSOLIDATED CLASS ACTION COMPLAINT AND NOTICE OF ERRATA** to be served on all counsel of record by causing same to be posted electronically via Lexis-Nexis File & Serve.

/s/ Steve W. Berman

Steve W. Berman